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Subject:—

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Indian Fisheries Act,

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C O N T E N T S.

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Sr.No.	R.I./O.No.	Subject	Pages.
		Opinions under the Indian Act, 1897.	
1.	0303/1346/1951.	Section 3(3) Whether the Government have the power to auction the fishing rights in inland waters in a District.	1-6

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The question for consideration is whether the Government have the power to auction the fishing rights in inland waters in a District. Such an auction was attempted to be held in Sabarkantha District under the orders of the Government in January 1951. The local fishermen did not like the idea of the fishing rights being sold by public auction. Consequently there were no bidders at the auction-sale. The local fishermen through their Advocate then gave notice to the Government under section 80, Civil Procedure Code that they would file a suit against the Government if the auction was held again. The main point raised in that notice is that all fishermen have the inherent and natural right to fish in inland waters, and that the Government had no right to give the right of fishing exclusively to any person or persons by holding an auction-sale of it.

In such cases the first question to be determined is whether the right is claimed with reference to "public waters" or with reference to "private waters", The acution-sale in this case was to be held with reference to rivers, streams, lakes and tanks situate within the district. These rivers, streams, lakes and tanks were not owned by any private individuals. In the present case therefore the question arises with reference to "public waters".

The term "private waters" is defined in section 3(3) of the Indian Fisheries Act, 1897. That term means and includes "water which is exclusive property of any person, or in which any person, has for the time being, an exclusive right of fishery, whether as owner, leasee or in any other capacity." All other waters are "public waters". According to Amin and Shastri on Easements, the term "public waters" comprises the waters of the

sea, including ..

sea, including its creeks arms and harbours within the territorial limits, and also waters of tidal and nagigable rivers.

Under section 37 of the Land Revenue Code the beds of rivers, streams, nalas, lakes and tanks, and water-courses, and all standing and flowing water, wherever situate, which are not the property of individuals, are deemed to be the property of Government. The inland waters which are not the property of any private individual would therefore vest in the Government for the benefit of all the public.

The rights of citizens with reference to "public waters" are well defined: All the members of the public have a general right to take fish from public waters. But this is subject to the paramount right of the State. It is competent for the State to grant an exclusive right to fish in particular areas of "public waters". In England the Magna-Charta made a special provision that the Crown shall not grant an exclusive right to fish in public waters to any individual. There is no such prohibition in India. The learned authors referred to above have therefore stated as follows, at page 383 of their work on the Easements Act: "Accordingly in India the grant of an exclusive fishery by the Crown could be proved by appropriate evidence."

It is therefore clear that in India the Government can grant an exclusive right of fishing in public waters to any individual. The right may be sold by auction, and it will confer on the purchaser only a temporary exclusive right to fish in these waters during a definite period. There could therefore be no legal objection to such an auction-sale.

In this connection reference may be made to the case of Laxman vs. Ramji 23 Bom. L.R.page 939. In the case of Sujyatali vs. Dayabibi (12 Calcutta Weekly

Notes page 105) it was held that the Government have a right to lease out fishery rights to any individual. There is therefore no substance in the contention raised by the fishermen of Sabarkantha District that the Government cannot hold an auction-sale of the fishing rights in inland waters.

It seems to have been urged that the Indian Fisheries Act, 1897 does not give any such right to local Governments. This Act seems to have been intended for the prevention of certain types of mischiefs in connection with fishing. There is nothing in the Act which would prevent a local Government from leasing out fishery rights in inland waters, especially with reference to rivers, lakes and tanks which vest in those local Governments.

The suit, if filed, will be therefore defensible.

Id.JRD/12.6.
Remembrancer of Legal Affairs.

U.R. to R.D.No.9308, dated 13th June 1951.

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